



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2145, RELATING TO ORDERS OF THE CAMPAIGN SPENDING COMMISSION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

LATE

DATE: Tuesday, February 11, 2020

TIME: 10:10 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Deputy Attorney General Steve Bumanglag or Lyle Leonard

Chair Rhoads and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill. The purpose of this bill is to allow an order of the Campaign Spending Commission (the Commission) to be enforced as a civil judgment by the circuit courts. This bill seeks to accomplish its purpose by amending sections 11-410, Hawaii Revised Statutes (HRS).

Currently, the statute provides for contempt of court remedies for failure to comply with orders of the Commission. This measure will provide civil money judgment remedies in addition to the contempt of court remedies which will strengthen the ability to collect fines and deter future non-compliance with orders of the Commission.

Additionally, the measure clarifies that judgments obtained to enforce orders of the Commission are not eligible for appeal. The existing law already provides that appeals are only allowed within the twenty days from the entry of the Commission's orders. The wording is consistent with the current statutory scheme of chapter 11 HRS.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 7, 2020

TO: The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

FROM: Kristin Izumi-Nitao, Executive Director T.B.
Campaign Spending Commission

SUBJECT: **Testimony on S.B. No. 2145, Relating to Orders of the Campaign Spending Commission**

Tuesday, February 11, 2020
10:10 a.m., Conference Room 016

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission ("Commission") supports this bill.

This measure amends HRS §11-410 by (1) amending subsection (b) to provide that a person waives the right to a contested case hearing if the person fails to request a contested case hearing within twenty days of receipt of the Commission's preliminary determination, and (2) amending subsection (d) to provide that a final order of the Commission may be filed in the First Circuit Court for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in the circuit courts, provided that there shall be no appeal from a judgment issued pursuant to subsection (d).

The final orders that are confirmed as judgments under subsection (d) are only those orders that are rendered final because the respondents have failed to request a contested case hearing pursuant to HRS §11-405(b). These final orders would not be appealable to the Circuit Court since the respondents would have failed to exhaust the administrative process. Further, if a final order is confirmed as a judgment under subsection (d), any respondent would have the right to seek collateral relief from the judgment under Rule 60(b)², Hawaii Rules of Civil

¹ The companion bill is H.B. No. 1704.

² Rule 60 provides for relief from a judgment or order as follows:

Procedure. If relief is granted, the Circuit Court would most likely refer the case back to the Commission for a contested case hearing, rather than decide the case at that time as an agency appeal because of the lack of an evidentiary record that a contested case hearing would provide.

These amendments were suggested by the deputies in the Civil Recoveries Division of the Department of the Attorney General who are assisting the Commission by enforcing the Commission's orders in the First Circuit Court. The Commission urges this Committee to pass this measure.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Hawaii
Holding Power Accountable

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Tuesday, February 11, 2020
10:10 AM
State Capitol, Conference Room 016

in consideration of
SB 2145
RELATING TO ORDERS OF THE CAMPAIGN SPENDING COMMISSION.

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports SB 2145, with amendments, which (1) provides that the right to a contested case hearing is deemed waived if a person does not request a hearing within 20 days of receipt of the commission's preliminary determination and (2) permits an order of the Campaign Spending Commission (Commission) to be confirmed as a judgment in Circuit Court, giving the order the same force and effect as any other judgment issued by the Circuit Courts with no appeal from the judgment.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through improving our campaign finance system with laws that amplify the voices of everyday Americans by requiring strong disclosures and making sure everyone plays by the same commonsense rules.

Common Cause Hawaii supports SB 2145, which permits an order of the Commission to be confirmed as a judgment in Circuit Court, giving the order the same force and effect as any other judgment issued by the Circuit Courts. However, the Commission's judgment should be appealable like any other court judgment. Further, a person's right to a contested case hearing should **not** be deemed waive if the person does not request a hearing within 20 days of receipt of the preliminary determination. There may be many reasons why a person does not request a contested case hearing within 20 days of receipt of the preliminary determination -- illness, travel, lack of understanding of the process, trying to obtain counsel, etc.

Common Cause Hawaii suggests SB 2145 be amended to remove that (1) a person's right to a contested case hearing is deemed waived if a person does not request a hearing within 20 days of receipt of the Commission's preliminary determination and (2) the Commission's orders confirmed as a judgment in the Circuit Courts are not appealable. A person's right to due process and his/her fair day in court is a central part of democracy. As it is currently written, SB 2145 is too broad and may negatively impact people's appeals rights and does not permit any appeals.

Thank you for the opportunity to testify in support of SB 2145, as amended. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,
Sandy Ma
Executive Director, Common Cause Hawaii

SB-2145

Submitted on: 2/7/2020 4:20:50 PM

Testimony for JDC on 2/11/2020 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Golojuch Jr	Individual	Support	No

Comments:

SB-2145

Submitted on: 2/8/2020 12:14:20 PM

Testimony for JDC on 2/11/2020 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Support	No

Comments:

Concur with CommonCause Hawaii comments.

TO: Members of the Committee on Judiciary

FROM: Natalie Iwasa
808-395-3233

HEARING: 10:10 a.m. Wednesday, February 11, 2020

SUBJECT: SB 2145 Waiver of Rights, Campaign Spending Commission - **COMMENT**

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB 2145, which would deem certain rights waived if a request for a hearing is not made within 20 days of receipt of the Campaign Spending Commission's preliminary determination.

It doesn't seem fair to waive rights of a person to a hearing, especially with a short 20-day window.